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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 16.1.2007.

Gordhan .... Appellant.

vs

Hirdey Ram and another .....Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.Adarsh Jain,Advocate,for the appellant.
Mr.Anand Kumar Bishnoi,Advocate,for respondent no.1-caveator.

Kiran Anand Lall, J.

The appellant is vendee-defendant in a suit for possession, by way of pre-emption, filed under Section 22 (1) and (2) of the Hindu Succession Act, 1956 (to be referred as “the Act”) which has been decreed against him, by both the courts below. He is now before this court, in regular second appeal.

Facts of the case, as detailed in the judgment of the first appellate court, are that the appellant (vendee), along with respondent no.1 (plaintiff) and other co-heirs, inherited the suit property, which belonged to Rewti deceased and was reserved for Abadi/ residential purposes, during consolidation of land-holdings. Being sons of Rewti deceased, respondent no.1 (plaintiff) and respondent no.2 (vendor), fall in the category of class-I legal heirs qua his this property which was never partitioned amongst his heirs. Respondent no.2 sold 1/4th share in this property to the appellant vide registered sale-deed dated 4.8.2000 for a sale consideration of Rs.32,000/-. According to respondent no.1, he did so, with an ulterior motive to deprive him (respondent no.1) of his legal right to purchase that. No notice of

proposed sale was ever served upon him. The sale had, allegedly, taken place for Rs.20,000/- but an inflated amount of Rs.32,000/- was fictitiously got entered in the sale-deed.

The appellant contested the suit, pleading that the suit property was mutually partitioned between the parties and they had constructed their residential houses over their respective portions of the land which had fallen to their shares. It was, therefore, pleaded that respondent no.1 had no preferential right to pre-empt the sale. It was also pleaded that the sale had, infact, taken place for Rs.32,000/-.

The courts below recorded a concurrent finding of fact that the suit property which was inherited by respondents no.1 and 2 from their predecessor-in-interest, Rewti, continued to remain joint upto the time of impugned sale and was never partitioned. It was further held that respondent no.1, who is the real brother of respondent no.2, had, therefore, a superior right to purchase it. Since no notice of sale was ever given to him, the suit for possession by way of pre-emption was decreed in his favour on payment of the sale consideration, plus stamp and registration charges.

Learned counsel for the appellant contended that respondent no.1 could have pre-empted the sale, only if the suit property had devolved upon him and respondent no.2, after the commencement of the Act, and not otherwise, and since there was nothing on record to indicate that the property was inherited by respondents no.1 and 2 after the commencement of the Act, the former (respondent no.1) had no right to pre-empt it. This contention, I may state, cannot be allowed to be raised at this late stage, as, at no earlier stage, it was the case of the appellant that the estate of Rewti deceased had devolved upon respondent no.1 and respondent no.2 prior to

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the commencement of the Act. Besides, even now, learned counsel could not point out any evidence in this regard.

Another argument of the learned counsel for the appellant was that the heirs of Rewti deceased had mutually partitioned his estate much prior to the impugned sale, and as such, respondent no.1 had no preferential right to pre-empt the sale. However, no evidence could be pointed out, in this regard, too. Faced with this situation, he further contended that as respondents no.1 and 2 were in possession of separate portions of property, it should be presumed that the property had been partitioned between them. But, there is no merit in this contention either, since both the courts below have found, as a fact, that the property inherited by the heirs of Rewti deceased continued to remain joint and had not been partitioned between them, at any stage. Otherwise too, the mere fact that some of the heirs are in possession of separate portions of the joint property, is not sufficient to raise a presumption that the property stood partitioned.

There is, thus, no merit in the appeal which shall stand dismissed, in limine.

16.1.2007. (Kiran Anand Lall)
vs. Judge.